

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

INFORMAL DOCKET NO.: 1953(I)

KAIRAT NURGAZINOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

**COMPLAINANTS' REPLY TO RESPONDENTS' RESPONSE TO MOTION OF
NON-PARTY KAPUSTIN TO INTERVENE**

Pursuant to Rules 69 and 71 of the Federal Maritime Commission's ("FMC") Rules of Practice and Procedure 46 C.F.R. 502 *et seq.*, Complainants, by their Counsel, Marcus A. Nussbaum, Esq. respectfully submit this brief in Reply To Respondents' August 22, 2016 Response to Motion of Non-Party Sergey Kapustin ("Kapustin") to Intervene.

RELIEF REQUESTED

This Reply is respectfully submitted as a Response to the August 22, 2016 filing of the Respondents herein; (while titled as a "Response to Complainants' Motion in the Guise of a Brief...") itself, a response to the motion of non-appearing non-party Sergey Kapustin

(“Kapustin”) to intervene in this matter and for other relief. It is noted that Respondents’ counsel, Mr. Jeffrey requests no affirmative relief in his filing. Indeed, and to the time of this writing, the point and purpose of Mr. Jeffrey’s filing remains unclear.

RELEVANT PROCEDURAL HISTORY

On July 13, 2016, non-party Kapustin filed a frivolous and baseless motion seeking to intervene in this matter, followed by three (3) supplemental submissions, all made without leave of the Presiding Officer.

On August 15, 2016 Complainants served their Response to Kapustin’s motion. Thereafter, on the same date, Respondents served their Response to Kapustin’s motion, wherein Mr. Jeffrey not only indicated his lack of objection to Kapustin intervening, but further evinced his support for Kapustin’s “arguments”.

Thereafter, on August 22, 2016, Mr. Jeffrey filed a Reply to Complainants’ response to Kapustin’s motion; this despite the fact that as Mr. Jeffrey and his client are not the movant, they have no right to any reply thereon, wherein Mr. Jeffrey ironically accuses Complainants’ counsel of filing an affirmative motion in the guise of a response, the patent absurdity of which is self-evident.

In sum, and despite the tangled web woven by Mr. Jeffrey on behalf of non-party Kapustin whose “cause” Mr. Jeffrey has now openly advocated, one fact has emerged crystal clear, to wit: Mr. Jeffrey is actively furthering Mr. Kapustin’s causes herein, whatever they may be, and has, upon information and belief, authored the filings that Mr. Kapustin, a proven fraud, liar, and “master criminal” avers to have written himself. The latter is particularly troubling in light of coterminous indication that an *undated* Affidavit proffered by Mr. Jeffrey containing a signature purporting to be that of his client, Mr. Hitrinov, has been found to be highly probable of having

been forged, by an expert witness retained and exchanged by complainants herein, the ultimate irony of which cannot be overstated.

ARGUMENT

Respondents Now Openly Advocate on Behalf of Non-Appearing Movant and Non-Party Kapustin

In the first instance, a review of Respondents' instant filing indicates that it is nothing more than a thinly veiled affirmation in further support of Kapustin's Motion to Seal and Strike, wherein Respondents' counsel, Mr. Jeffery is now openly arguing against the introduction of documents of which he took no position previously. To the extent that Respondents are now openly advocating on behalf of non-party Kapustin (whom counsel acknowledged was a "liar" and "mentally disturbed" in a series of emails exchanged yesterday), Mr. Jeffery who should file a Notice of Appearance on Kapustin's behalf in order to make this representation official.

As to counsel's "categorical" denials of having any involvement with Kapustin whatsoever, it is noted that Mr. Jeffery's instant filing admits to having "failed to serve their response regarding intervention on Mr. Kapustin" while accusing Complainants' counsel of making "an intentional decision to withhold service" of said response upon Kapustin. It is undisputed that the only parties copied to Complainants' email service and filing of the response regarding intervention were: Respondents' Counsel; the Secretary of the FMC; and the Judge's Mailbox (judges@fmc.gov), thus begging the question that if not the *undersigned*, then *who* provided Kapustin with a copy of Complainants' response regarding intervention, which as of the time of this writing *has not yet been made available for reading on the docket*.

The Ongoing Collusion Between Respondents and Kapustin

With further respect to the ongoing collusion between Mr. Jeffery, one Jon Werner, Esq., and Kapustin, it is undisputed that Kapustin speaks little or no English at all, and that his papers were clearly written by an attorney. This is not moot court and Complainants are not here to answer Mr. Jeffrey's Socratic musings on this issue -- his bafflement, confusion and inability to see things is dispositive of nothing. What is dispositive is the fact that Mr. Jeffrey has admittedly coordinated with Mr. Werner (who is Respondents' counsel in other matters) for purposes of providing Kapustin (albeit secondhand) with shipping documents filed herein with the request that Kapustin "review" them (see, email from Jon Werner to Kapustin of May 27, 2016 annexed hereto as Appendix "A"). Strangely enough, Mr. Werner (who has not appeared in this matter) purports to have received documents from "Mr. Nussbaum", when no such documents were ever provided to Mr. Werner by the undersigned.

To the extent that Respondents now aver that Mr. Werner is Respondents' "coordinating litigation counsel" it should be known to the Presiding Officer that what Mr. Werner is and has been "coordinating" for quite some time now is a campaign of personal, *ad hominem* attacks against the undersigned, beginning with his threats to put the undersigned "out of business". It was recently discovered that Mr. Werner went as far as to contact all of the undersigned's adversaries on other Federal matters to share information regarding the undersigned's law practice and personal travel abroad, as recently admitted by an attorney in writing, who also admitted that "Jon Werner, Esq. ...is litigating a separate maritime case with Mr. Nussbaum captioned, Ovchinnikov, et al v. Hitronov, et al., Docket No. 15-11."

The Presiding Officer may also recall that Mr. Werner and his law firm were previously the subject of a Motion to Amend a Complaint to add them as respondents in the matter of *Baltic*

Auto Shipping Inc. v. Michael Hitrinov et al., FMC Docket No.: 14-16, where it was alleged that Mr. Werner, by his actions, had retaliated against the Complainant therein for having filed a Complaint with the Commission in that matter. In denying that motion, the Presiding Officer explained that:

“Section 41104(3) does not grant power to the Commission to police the litigation tactics of common carriers or OTI’s in the Federal Courts.” (See, Order Denying Complainant’s Motion for Leave to Amend its Complaint and Orders on Related Filings dated May 12, 2015, FMC Docket No.: 14-16)

It is respectfully submitted that the distinction between the Baltic matter and the case at bar is that the Presiding Officer *does* have the power to police the litigation tactics of the Respondents within this proceeding, and it is urged that an appropriate exercise of that power would be the summary denial of Kapustin’s fatally defective and frivolous motions for various relief sought herein.

Complainants’ other filings have addressed in detail the arguments made by Respondents and Kapustin in support of their Motion to Strike and Seal, including within Complainants’ separately filed Response to Respondents’ Motion to Correct the Record. Complainants do, however, close with the obvious conclusion that regardless of whether certain documents were subject to a confidentiality or protective order (which Complainants explain elsewhere were disclosed to third-parties by Kapustin himself, resulting in the confidentiality having been waived), the alleged confidentiality of said documents has absolutely nothing to do with whether or not Kapustin should be permitted to intervene herein.


CONCLUSION

As set forth above, Respondents now been exposed for colluding with and advocating on behalf of non-appearing movant and non-party Kapustin in an effort to frustrate the orderly conduct of these proceedings. As such, the Presiding Officer is respectfully urged to exercise his

power to police the litigation tactics of the Respondents herein, which would include the summary denial of all motions made by Kapustin to date.

Dated: Brooklyn, New York
August 23, 2016

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

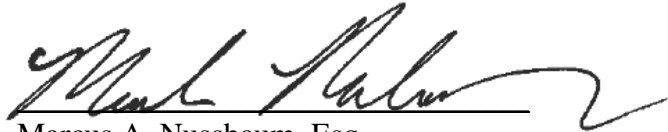
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANTS' REPLY TO RESPONDENTS' RESPONSE TO MOTION OF NON-PARTY KAPUSTIN TO INTERVENE** and **APPENDIX** upon Respondents' Counsel at the following address:

Nixon Peabody LLP
Attn: Eric C. Jeffrey, Esq.
799 9th Street NW, Suite 500
Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com).

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", is written over a horizontal line.

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marcus.nussbaum@gmail.com

Dated: August 23, 2016 in Brooklyn, New York.